IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4358 OF 2003
(For condonation of delay)
IN
CRIMINAL APPEAL NO.1253 OF 2003

The State of Maharashtra
(Through D.N.Nagar Police Station,
Mumbai, CR No.658/91.) Applicant
(original complainant)

vs.

Shafi Ahmed Rafique Khan
Bhaskar Chawl, Nehru Chowki,
Old Bawadi, Gaodevi Hill,
Andheri (W), Mumbai. Respondent
(original accused no.1)

AND

CRIMINAL APPEAL NO.1253 OF 2003

The State of Maharashtra
(Through D.N.Nagar Police Station,
Mumbai, CR No.658/91.) Appellant
(original complainant)

vs.

Shafi Ahmed Rafique Khan
Bhaskar Chawl, Nehru Chowki,
Old Bawadi, Gaodevi Hill,
Andheri (W), Mumbai. Respondent
(original accused no.1)

Ms.V.R.Bhonsale, Addl. Public Prosecutor for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 9th March 2005

P.C.

On 12th May 2003 the Additional Sessions Judge, Greater Bombay passed the judgment in Sessions Case No.131/1992 convicting the accused-respondent for the

offence punishable under section 304 part II of IPC and sentenced him to suffer rigorous imprisonment for a term of four years and fine of Rs.30,000/- and in default of payment of fine, simple imprisonment for one year.

2. In the view of the State, the sentence awarded by the Additional Sessions Judge to the accused-respondent is inadequate and consequently the Criminal Appeal no.1253/2003 has been preferred. The Criminal appeal suffers from delay of 93 days and hence the State has made the application for condonation of delay.

3. On 8th February 2005 we ordered issuance of notice to the respondent to show cause why delay in filing criminal Appeal be not condoned.

4. The office has reported that the Public Prosecutor has not supplied the spare copy of the memorandum for issuing notice to the respondent and, therefore, notice could not be issued. We thought we must examine whether the criminal Appeal requires consideration on merits assuming that the appeal did not suffer from any delay and if some merit was found, we may give time to the office of Public Prosecutor to supply spare copy to enable the office to issue notice.

5. We, accordingly, perused the impugned judgment dated

12th May 2003 and heard the learned APP.

6. Mukesh (the deceased) and his friend Babasaheb Vasant Mahajan (PW-4), on 22nd November 1991 at about 4 p.m. or so were playing with a rubber ball in a open space at Nehru chowk, Govandi-Dongri area in Andheri (West). The said open space is surrounded by many chawls. The accused Shafi Ahmed Rafique Khan was residing in one of these chawls. The ball rolled into the drain of the accused's room. Ahmed bi - mother of the accused was sitting there and she got annoyed thereby. Some verbal altercation took place between Ahmed bi and Mukesh. The accused came out of the room and started beating Mukesh. Mukesh fell down. PW-5, PW-3 and some neighbouring women intervened and separated Mukesh. The accused then went inside his room; came out with knife and threatened Mukesh with dire consequences. After some verbal altercation, the accused stabbed on the chest of Mukesh. In the condition of profuse bleeding, Mukesh was taken to Cooper Hospital where he died. The prosecution evidence does not indicate that there was any intention on the part of the accused to cause the death of Mukesh. It appears that the quarrel started between the two young boys and in the sudden quarrel, the accused inflicted knife blow on the chest of Mukesh. The accused has been convicted under Section 304 part II of the IPC. There

is no challenge by the State to the acquittal of the accused under section 302 IPC. Looking to the age of the accused, the circumstances in which the incident occurred and other facts, we are of the view that the sentence of four years R.I. awarded by the trial Court to the accused for the offence punishable under section 304 part II cannot be said to be grossly inadequate warranting interference by us in the appeal.

7. We are of the view, therefore, that even if delay in filing the criminal appeal is condoned, no case for entertaining the criminal appeal is made out.

8. Criminal appeal as well as criminal application are disposed of accordingly.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)